

IN THE
United States
Court of Appeals
For the Ninth Circuit

G. A. PEHRSON,

Appellant,

VS.

C. B. LAUCH CONSTRUCTION CO., a Corporation,
Appellee.

*Appeal from the United States District Court
for the District of Idaho,
Northern Division.*

REPLY BRIEF OF APPELLANT

FRANK FUNKHOUSER,
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Stripped of the niceties and replying to appellee's evasive arguments:

The appellant must get to the roof of the school building immediately because the appellee was not laying the roof according to the terms and specifications of the contract. (Tr. 50) Appellee forced those connected with the construction of the building to get to the 19 foot roof with a 16 foot ladder. (Tr. 109) The ladder was too short and had to stand too straight. (Tr. 109) In getting from the upper end of the ladder to the roof it was necessary to crawl (Tr. 166), jump (Tr. 182), climb (Tr. 196) to the roof.

To get to the ladder was difficult. Appellant had to climb over broken concrete blocks, broken boards and other rubbish. (Tr. 95) These waste materials made it impossible to see how the base of the ladder rested upon the ground. Appellant could not even see or adjust the ladder. All this junk, especially the broken concrete blocks, must have been on and around the premises a long time because the building was far past the state where concrete blocks had been used. (Tr. 87-102-109)

Rubbish lying around building construction jobs creates such dangerous hazards that the Idaho safety laws are very strict and definite. Section 1.117 of the General Requirements referred to in our opening brief states:

“All scrap lumber, waste material, and rubbish from the building construction shall be collected and removed, stored in neat piles, and not left to accumulate.”

We tried in vain to get this all-important Code in evidence. The Court repeatedly said he would take care of it in preparing his instructions to the jury. (Tr. 56, 57) The Court not only refused to give the jury the aid of this part of the code, he, on his own motion, during the examination of appellee's first witness, struck from the complaint the allegation concerning rubbish laying about the place.

Indeed we do contend that falling on broken concrete blocks added to the injuries. Appellant had previously fallen but never on broken concrete blocks. Falling on broken concrete blocks caused his limbs to be wired and bolted together, forcing him to spend the remainder of his life in misery, pain and suffering. (Tr. 81) All this by the gross negligence of appellee by not furnishing the men connected with the work on the building adequate means and proper place to work. (Tr. 81-123-124-125)

In addition, the Idaho Safety Code says:

“In the use of ladders from the ground, the lower end shall be placed on a solid footing to prevent it sinking into the earth. Also if the top of the ladder is in danger of slipping or tipping, it shall be securely tied or fastened.”

The Court refused to give the jury our requested Instruction No. 5 on this point.

Appellee says appellant took a chance. Architects always take chances. (Tr. 95) Architects must take chances, else contractors would not do their work properly, as appellee was neglecting his contractual duties on the date of the fall.

Appellant took no more chances that day than usual. He took chances when he built the Davenport Hotel, when he built the great Hanford Project during 1943-1945 (Tr. 28), some 1600 projects within the 50 years of his outstanding work as an architect. No, appellant is no amateur, he knows how to get around a building under normal and natural conditions.

Did the ladder slip to the left?

Appellee's witnesses say the ladder was standing against the wall in its natural position after the accident. (Tr. 168-169-190)

The accident came about by appellant trying to get his body from the top of the short 16 foot ladder to a 19 foot roof. The top of the ladder was not tied, its base was surrounded with rubbish.

The architect, under his contract, must make inspection. He is as necessary in the construction of a building as the carpenters or bricklayers. Our cases cited in our opening brief amply support this contention as to why requested Instruction No. 5 should have been given.

Appellant's witness Hirst should have testified for the reasons stated in our opening brief — cases cited there.

We submit the Court erred as set forth in our opening brief.

Respectfully submitted,

FRANK FUNKHOUSER

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